

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 215, 219, 220, and 315 of the Fish and Game Code and to implement, interpret or make specific sections 215, 219, and 220 of said Code, proposes to add Section 721, Title 14, California Code of Regulations, relating to suspension of flow requirements from Grizzly Valley Dam at Lake Davis.

Informative Digest/Policy Statement Overview

Fish and Game Code (FGC) Section 5937 requires that sufficient water be supplied through or around a dam to keep in good condition any fish that may be planted or exist below the dam. In addition, FGC subsection 219(a) allows the Fish and Game Commission (Commission) to adopt regulations that supersede any Code section for the protection of fish, wildlife, and other natural resources under the jurisdiction of the Commission.

The Department of Fish and Game (Department) has proposed to eradicate northern pike from Lake Davis (Plumas County) and all of its tributaries to re-establish the trout fishery at Lake Davis and to prevent the pike from escaping from the reservoir and causing adverse ecological impacts, such as those that have occurred at Lake Davis, in other parts of the State or region. A joint EIR/EIS was prepared by the Department and the U.S. Forest Service for the proposed Lake Davis Pike Eradication Project and made available for public comment. The 45-day public comment period ended October 16, 2006. Seven alternatives were proposed including: a no project/no action alternative; five alternatives using the chemical piscicide rotenone at various reservoir water levels; and a no chemical alternative that calls for complete dewatering of the reservoir and its tributaries.

As of the date of this Initial Statement of Reasons, a project involving the use of rotenone has not been approved. However, if one is approved, the Department would request the Commission adopt a regulation to temporarily supersede FGC Section 5937 for the specific and limited purpose of implementing the project to eradicate pike, which would protect fish, wildlife, and other natural resources under the jurisdiction of the Commission. Because of the time it would take for the Commission to notice, consider, and potentially adopt such a regulation, this Initial Statement of Reasons has been prepared prior to the approval of a pike eradication project and the application of any such regulation would be limited to an approved project. If the Department approves such a project, the outlet valve in Grizzly Valley Dam would be closed for at least five days and potentially up to a total of 45 days following application of rotenone to the reservoir waters, depending on which neutralization option is permitted. Closing the outlet valve would result in dewatering Big Grizzly Creek for at least a 400-yard reach downstream where accretion flows appear. This proposal requests that the Commission temporarily supersede FGC Section 5937 specifically for Grizzly Valley Dam to aid the eradication of pike from Lake Davis and its tributaries.

Whether or not Fish and Game Code Section 5937 applies to the unique circumstances of the proposed pike eradication project is a question the resolution of which would involve complex biological, technical and legal issues. This proposed regulation is a cautionary approach that is intended to minimize the risk of delay from legal challenges that could delay implementation of an approved project for weeks to a point in time when seasonal conditions are not ideal, as was the case in 1997, or for another year until reservoir levels and seasonal conditions are optimal

for an effective treatment (assuming pike have not escaped Lake Davis in the meantime, and the Department has the ability and opportunity to implement an eradication project in a future year). Given the ever-increasing pike population, the increasing incidence of anglers catching pike, recent known incidents of anglers moving live pike, and the potential for spilling of the dam in extremely wet years, the Department believes it is critical to minimize the risk of delay.

Therefore, this proposal is requested to be considered in the Commission's early 2007 schedule. It is anticipated that the Department will make a decision about which project alternative to authorize prior to the Commission's March meeting.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California, on March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Dr. Ed Pert, Lake Davis Pike Eradication Project Leader, Department of Fish and Game, phone (916) 445-3616, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulation proposal only affects a 400-yard reach of Big Grizzly Creek from 5 to 45 days.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John Carlson, Jr.
Executive Director

Dated: February 6, 2007